



Council of the
European Union

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COUNCIL OF THE EUROPEAN UNION
(Transport, Telecommunications and Energy)

2 and 3 June 2022

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MEETING ON THURSDAY 2 JUNE 2022

TRANSPORT

Any other business

9. (e) **Work programme of the incoming Presidency** 9505/22
Information from the Czech delegation

The Council took note of the information provided by the Czech delegation.

MEETING ON FRIDAY 3 JUNE 2022

TELECOMMUNICATIONS

Any other business

14. (b) **European Declaration on Digital Rights and Principles
for the Digital Decade**
Information from the Presidency

The Council took note of the state of play of discussions on this file.

- (c) **International Telecommunication Union
Plenipotentiary Conference
(Bucharest, 26 September - 14 October 2022)**
Information from the Presidency and delegations

The Council took note of the information about the preparations for this conference and about candidates from EU Member States running for high level positions in the ITU.

- (e) **Work programme of the incoming Presidency**
Information from the Czech delegation

The Council took note of the information provided by the Czech delegation.

Statements to the non-legislative "A" items set out in doc. 8391/22

<u>Ad "A" item 1:</u>	Council Decision authorising the opening of negotiations with Ukraine for an agreement on the carriage of goods by road <i>Adoption</i>
<u>Ad "A" item 2:</u>	Council Decision authorising the opening of negotiations with the Republic of Moldova for an agreement on the carriage of goods by road <i>Adoption</i>

STATEMENT BY THE COMMISSION

“The Commission acknowledges the swift action of the Council for opening the negotiations with Ukraine and Moldova to meet the exceptional and urgent need to conclude swiftly road transport agreements to facilitate transport of goods, including agricultural perishable products, in the context of Russia’s military aggression against Ukraine.

1. The Commission considers that any agreement on the carriage of goods between the European Union and Ukraine or Moldova aimed at regulating mutual access to road freight transport market falls within the exclusive external competence of the Union referred to in Article 3(2) TFEU, even where that agreement may be limited in time. First, the conclusion of international agreements on road transport of goods is explicitly provided for in a legislative act of the Union (Article 1 of Regulation (EC) No 1072/2009¹). Second, the conclusion of such agreement *may affect common rules or alter their scope*, in line with Article 3(2) TFEU, as interpreted by the ECJ jurisprudence². The fact that the envisaged agreements are intended to be limited in time and directly aim to specifically address repercussions of Russia’s unprovoked and unjustified military aggression against Ukraine does not change the nature of the competence exercised by the Union.

¹ Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage, OJ L 300, 14.11.2009, p. 72.

² ECJ Opinion 2/15 of 16 May 2017 in the “Singapore” case, paragraph 201.

2. The Decisions of the Council empower the Commission to open negotiations with a view to swiftly conclude temporary road transport agreements as urgent emergency measures to redirect and facilitate freight transport in light of Russia's aggression against Ukraine. If concluded, these agreements will cease to apply before Union comprehensive road transport agreements will be concluded. In order to avoid a deterioration of the status quo resulting from existing bilateral agreements between Member States and Ukraine and Moldova after these temporary agreements have ceased to apply, the Commission considers that in this unique situation the Union temporary agreements should include *ad cautelam* a provision confirming the intention of the parties that existing bilateral agreements may again apply in full as of that moment, in conformity with Article 1(3) of Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market³ and the relevant case-law of the Court of Justice.⁴

The approach suggested above is warranted in this very specific and exceptional context in order to ensure access to the market on the same terms as currently set under the existing bilateral agreements.

3. The Commission further notes that the decision of the Council includes provisions on the exercise of competence by the Union and very specific negotiating directives, such as the ones concerning the envisaged scope of the agreement, its duration and the inclusion of a specific clause on extension.

The rules concerning the conferral of competences upon the Union and their exercise and the powers and institutional prerogatives of the institutions as regards the conclusion of international treaties are laid down in the EU Treaties. The Commission considers it legally incorrect that the Council sets rules concerning the exercise of Union competences in its Decisions authorising the opening of negotiations and recalls that negotiating directives may not be established with the intent to restrict the prerogatives of the Commission acting in its capacity as negotiator for the Union. As clarified by the Court of Justice⁵, it is contrary to Article 218(4) TFEU and the principle of institutional balance for the negotiating positions established by the Council to have binding effects on the Union negotiator. Therefore, the Commission understands the negotiating directives as setting political objectives and reserves to interpret the Decision of the Council accordingly.

³ OJ L 300, 14.11.2009, p. 72.

⁴ ECJ Opinion 2/15 of 16 May 2017 in the "Singapore" case.

⁵ Judgment of 16 July 2015, *Commission v Council (Australia greenhouse gas emissions trading system)*, C-425/13, ECLI:EU:C:2015:483, paragraphs 86-92.

4. The Commission also considers it legally incorrect that a Council Decision authorising the opening of negotiations indicates a substantive legal basis.

The Decisions authorising the opening of negotiations are premised solely on the existence of conferred powers of the Union and not on a determination of a specific competence. Their effect is limited to authorising the Commission or the High Representative, as the case may be, to use its prerogatives under the EU Treaties in order to start negotiations. The scope of these negotiations is therefore determined by the scope of the powers of the Union. Besides, the freedom of the envisaged treaty partner of the Union as regards the determination of the scope of the negotiations cannot be limited by the Council Decision authorising the opening of the negotiations. Thus, the precise legal basis for the future agreement can only be determined after the content of the agreement is known.

5. The Commission reserves all its rights as regards the above.”
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